

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

DISTRICT JUDGE GERALD BRUCE LEE
MAGISTRATE JUDGE JOHN F. ANDERSON

MICROSOFT CORPORATION)
)
Plaintiff,)
v.) CASE NO. 1:08cv00596-GBL-JFA
) TRIAL BY JURY DEMANDED
L & Y ELECTRONICS, INC.,)
)
JOHN A. LINTON, and)
)
SANGSOON LINTON)
)
Defendants.)

DEFENDANT JOHN LINTON'S MEMORANDUM IN SUPPORT OF HIS
MOTION TO COMPEL

Defendant, John A. Linton, ("Defendant" hereinafter) by counsel, submit this memorandum in support of Defendant John Linton's Motion to Compel as follows:

1. This case involves a jury trial for Microsoft's claims that Defendant willfully infringed Microsoft Corporation's ("Microsoft" hereinafter) intellectual property rights by distributing counterfeit copies of its software product Microsoft Office Professional 2003 Edition ("Office 2003"). Although Office 2003 is an abandoned product, Microsoft claims both actual, statutory and enhanced statutory damages. Microsoft alleges that eight registered trademarks and eight registered copyrights were infringed. In November 2007 a Microsoft agent met

with Defendant and requested L&Y Electronics no longer purchase Microsoft software from the corporation of IET-PA, Inc. In March 2007 a Microsoft agent, Richard Logue, purchased used software from co-defendant L&Y Electronics. This purchase is alleged by Microsoft to include infringing software. In April-May, 2008 a Microsoft agent, Reid O'Neil (also known as Reid O'Neal) purchased used software from co-defendant L&Y Electronics. Of the four Microsoft products purchased by Mr. O'Neil, Microsoft claims one was infringing.

2. On September 2, 2008 Defendant John Linton served on Microsoft his first request for documents (Defendant John Linton's First Request For Production of Documents to Plaintiff Microsoft Corporation). In most part, the requests were directed to documents that Microsoft has in support of its claims and averments in its complaint. In addition emails were requested that contain the name of the software supplier IET-PA, the Microsoft agent Richard Logue and the Microsoft agent Reid O'Neil. Additional requests were related to counterclaims that have been dismissed.

3. On September 19, 2008 Microsoft provided an initial response to Defendant's first document request enumerating its objections but without providing any documents.

4. On October 6, 2008 Microsoft provided a second response to Defendant's first document request. Once again no documents were attached. This response is attached hereto as Exhibit A.

5. In both of its responses Microsoft indicated that it would provide documents responsive to requests 1 through 12. On October 15, 2008 Microsoft forwarded a number of documents. However, these documents were not identified by discovery request nor were

statements provided identifying whether or not additional documents would be produced.

Defendant requests that Microsoft properly supply the documents as it indicated it would do, identify which request is being responded to and state whether or not there exists additional responsive documents.

6. Additionally, Defendant seeks documents responsive to requests 21, 22, and 23.

Request 21 seeks emails regarding IET-PA, Inc. Defendant is trying to determine why and on what basis Microsoft requested L&Y to stop purchasing products from IET-PA.

7. Request 22 seeks emails regarding “O’Neil.” Of the two claimed cases of infringing software, the second item of software was ordered by an individual calling himself Reid O’Neil. Defendant is concerned that “Reid O’Neil” may be a fraudulent name and is seeking confirmation.

8. Request 23 seeks emails regarding “Logue.” The claimed infringing software purchased by Microsoft in 2007 was done so by its agent Richard Logue. Defendant is seeking information regarding that purchase along with information on the relationship between Microsoft and Mr. Logue.

9. Microsoft has refused to submit any document related to requests 21, 22 and 23. It has further not responded to requests as to any partial submissions.

CONCLUSION

WHEREFORE Defendant respectfully request that Plaintiff be compelled to fully respond to Requests 1 through 12, 21, 22 and 23 of Defendant John Linton’s First Request For Production of Documents to Plaintiff Microsoft Corporation.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2008, I will electronically file the forgoing Memorandum with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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